

July 29 2010

Gary L. Walton, Esq.
 Paul J. Luwe, Esq.
 WALTON & LUWE
 P.O. Box 4248
 Butte, Montana 59702-4248
 (406) 494-1385

Ed Smith
 CLERK OF THE SUPREME COURT
 STATE OF MONTANA
 FILED

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Ed Smith
 CLERK OF THE SUPREME COURT
 STATE OF MONTANA

Attorneys for Defendant/Appellee

MONTANA SECOND JUDICIAL DISTRICT COURT
 SILVER BOW COUNTY

GREGORY A. SCHINDLER,
 and GRACE SCHINDLER

Plaintiffs,

-vs-

UNITED SERVICES AUTOMOBILE
 ASSOCIATION (USAA), INC.,

Defendant.

CAUSE NO. DV-08-537

**MOTION TO ORDER
ADDITIONAL TRANSCRIPTS**

COPY

COMES NOW the Defendant/Appellee, United Services Automobile Association, [hereinafter USAA], by and through its attorneys, Walton & Luwe, and moves the Court pursuant to Rule 8(3)(b) M.R.App.P. for an Order requiring the Plaintiffs/Appellants, Greg A. Schindler and Grace Schindler, to order the following additional transcripts at their expense:

1. Opening Statements;
2. The entire trial testimony of Rick Aufrecht;
3. The entire trial testimony of Greg Schindler;
4. The entire trial testimony of John Morrison;
5. The entire trial testimony Lee Williams;
6. The entire trial testimony of Grace Schindler;
7. The entire trial testimony of Maryann Shirer;
8. The entire trial testimony of Gary M. Zadick;

9. The entire transcript of all motions and argument at the close of Plaintiffs' case-in-chief and the renewal of said motions;
10. Closing Arguments;
11. The polling of the jury; and
12. And all evidentiary objections, arguments and motions heard outside the presence of the jury during the trial.

This Motion is made for the reason that Plaintiffs have appealed from the final judgment entered in this matter on July 20, 2010. Despite appealing a final judgment entered on the unanimous verdict of twelve jurors after a five day trial, Plaintiffs/Appellees have not ordered a transcript which contains a single word uttered at the trial. Plaintiffs/Appellees have the legal duty to order transcripts which fairly present a sufficient record for the Montana Supreme Court to properly rule upon the expected issues for appeal. Although Plaintiffs have filed a notice of appeal from the final judgment, they have limited their transcript request to argument of counsel and the Court's ruling on Plaintiffs' motion for partial summary judgment invoking the equitable estoppel, their motions *in limine* seeking to exclude any evidence at trial of their fraud and misrepresentations, and the Court's oral statements relating to their evidentiary motion.

Obviously, Plaintiffs strategy on appeal has not changed from their strategy at trial, i.e. if we can prevent the jury [here Supreme Court] from receiving [reviewing] any evidence of our lies, misrepresentations and falsehoods, then we will be rewarded for our efforts with a large verdict [new trial]. Plaintiffs' strategy, however, must be rejected by the district court. Their strategy, however favorable to their own cause, fails to provide an adequate record for the Supreme Court to rule on the expected appellate issues.

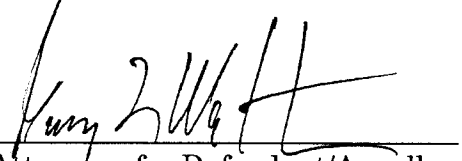
Plaintiffs will undoubtedly claim on appeal that USAA should not have been permitted to introduce any evidence of Schindler's telephone conversation with Lee Williams. They will, undoubtedly, base their legal argument on their claim that MCA 33-1-501(1) requires a written application and that MCA 33-15-402(3) excludes from evidence

2. MOTION TO ORDER ADDITIONAL TRANSCRIPTS

the written application if not provided to an insured within 30 days of his request. Their sanitized version of the record, however, fails to provide the Supreme Court with all of Schindler's misrepresentations to USAA and on which USAA based its decision to deny the claim. For these reasons and all of the reasons more fully set forth in USAA's Brief in Support of Motion to Order Additional Transcripts, USAA respectfully requests the Court to order Plaintiffs/Appellees to order the additional portions of the record as identified in this motion.

Dated: July 28, 2010.

WALTON & LUWE

By 
Attorneys for Defendant/Appellee
P.O. Box 4248
Butte, Montana 59702-4248

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CERTIFICATE OF SERVICE BY MAILING

I, Gary L. Walton, one of the attorneys for the Defendant/Appellee in the above-entitled action, hereby certify that on July 28, 2010, I served the foregoing attached **MOTION TO ORDER ADDITIONAL TRANSCRIPTS** upon the following attorneys of record by depositing a true copy thereof in the United States mails, postpaid, addressed as follows, to-wit:

Wade J. DaHood
Bernard J. Everett
Jeffrey W. DaHood
Knight, DaHood, Everett & Sievers
113 East Third Street
P.O. Box 727
Anaconda, Montana 59711

Ed Smith
Clerk of Montana Supreme Court
Room 323, Justice Bldg.
215 N. Sanders
P.O.Box 203003
Helena, Montana 59620-3003

Ms. Lori Maloney
Clerk of District Court
155 West Granite Street
Butte, Montana 59701

Kimberly Carpenter
Court Reporter
155 West Granite
Butte, Montana 59701

WALTON & LUWE

By 

Attorneys for the Defendant
P.O. Box 4248
Butte, Montana 59702-4248

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